

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-7124

In The
United States Court of Appeals
For The Second Circuit

B

JOSEPH T. SCHETTINO,

Plaintiff-Appellant,

P/S

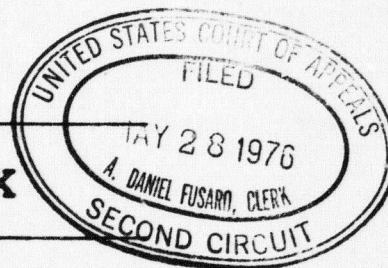
-against-

HARNESS TRACKS SECURITY INC.,

Defendant-Appellee.

*On Appeal from Judgment of the United States District Court
for the Southern District of New York.*

APPELLANT'S APPENDIX



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DOCKET ENTRIES

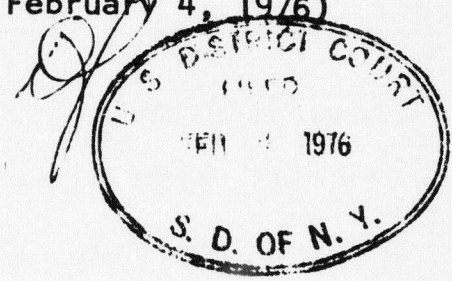
1a

Knapp Joseph T. Schettino -vs- Harness Tracks Security, Inc. 75-0

DATE	NR.	PROCEEDINGS
1-21-75		Filed Complaint and issued summons.
1-29-75		Filed summons & ent. marshal's ret. served on: (1) Harness Tracks Security Inc. by Ms. R. Laftin 1/23/75.
2-26-75		Filed ANSWER to complaint.
7-09-75		Filed deft's affidavit & notice of motion for dismissal by summary judgment ret. 9-19-75.
10-09-75		Filed deft's memorandum of law in support of motion for summary judg.
10-09-75		Filed Stip&Order adjourning deft's motion to dismiss from 9/19/75 to 10/31/75. Knapp, J.
11-28-76		Filed Memo-Decision #43792: The complaint is accordingly dismissed in its entirety. So ordered. Knapp, J. m/n
12-04-76		Filed JUDGMENT: Ordered that deft. have judgment against plttf dismiss the complaint in its entirety. Judgment Ent. Clerk. m/n Ent. 2-6
1-01-76		Filed plttf's notice of appeal to the USCA from order dismissing action on 2-4-76. Mailed copy to F.V. Mina.

A TRUE COPY
 RAYMOND F. FURCHARDT Clerk
 BY *[Signature]* Deputy Clerk

[Signature]



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
JOSEPH T. SCHETTINO

Plaintiff

75 Civil 313 (WK)

-against-

JUDGMENT

HARNESS TRACKS SECURITY, INC.

Defendant
----- X

Defendant having moved the Court for an order dismissing the action, and the motion having been treated as one for summary judgment, under Rule 56, of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Whitman Knapp, United States District Judge, and the Court thereafter on January 28, 1976, having handed down its memorandum opinion, granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendant HARNESS TRACKS SECURITY, INC., have judgment against plaintiff JOSEPH T. SCHETTINO dismissing the complaint in its entirety.

Dated: New York, N.Y.

February 4, 1976

Deborah F. Burchard
Clerk

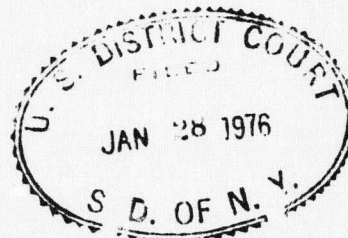
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FEB 1976

MEMORANDUM OPINION & ORDER (Filed January 28, 1976)

3a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
JOSEPH T. SCHETTINO,

Plaintiff,

- against -

HARNESS TRACKS SECURITY, INC.,

Defendant.
-----x

:
:
:
: MEMORANDUM AND ORDER

: 75 Civ. 313

KNAPP, D.J.

The facts in this case are not unknown to the court, having been fully developed in a plenary action (73 Civ. 1913) which was tried to the court and ultimately dismissed on the merits by Opinion dated November 21, 1974. As appears from that Opinion, plaintiff has engaged from time to time over the years in the business of owning and racing harness horses. Defendant was - and is - a corporation organized to serve as sort of an investigative arm of race track owners and racing licensing commissions to assist the latter in discharging the duties imposed upon them by various state legislatures to keep harness racing free of corruption and other illegality. Under defendant's understanding with its clients (and the clients' understanding

11379

with the authorities in the various states where they function), it is defendant's duty to supply its clients with all possible information - including unverified rumors - about horse owners and others, and it is the clients' responsibility to see that such information is properly evaluated before it is used against any individual. In short, the race tracks and licensing commission who look to defendant for information have the responsibility of seeing that no one is denied due process of law by its use.

In the previous action - which was in federal court because of diversity - plaintiff sued for libel, slander and defamation, contending that defendant had provided several of its clients with various unfounded rumors about plaintiff. Defendant did not dispute those factual allegations, but asserted it had acted in good faith in discharge of its duties to its clients and that its conduct was therefore privileged. The claim of privilege was upheld and the complaint dismissed. Plaintiff took no appeal.

Plaintiff's present complaint - concededly based on the same facts - is in two counts. The first count rests on the Fair Credit Reporting Act (15 U.S.C. 1681-1681t) and alleges that plaintiff made its reports to its clients without complying with the protective procedures set forth in that Act. The second does not specify its theory of liability but alleges that the statements were made in a "negligent and reckless manner" with no regard for their reliability.

The second count is easily disposed of. The finding of good faith on which was based the dismissal of the prior action disposes of any claim of negligence or recklessness. The second count is accordingly dismissed.

The first count is no more tenable. Although the complaint alleges that plaintiff was "employed" in the business of horse racing, the evidence before the court in the prior action conclusively establishes that insofar as his horse racing activities were concerned he was no one's employee but acted exclusively as an owner of horses. Treating this motion as one for summary judgment and as being based on the evidence already before the court, it thus conclusively appears that plaintiff cannot show that any of defendant's reports were used to determine his "eligibility for credit, insurance or employment". Porter v. Talbot Perkins Childrens Services (S.D.N.Y. 1973) 355 F.Supp. 174. It follows that the second count must also be dismissed.

This disposition of the case makes it unnecessary to consider whether defendant was acting as a "consumer reporting agency" so that plaintiff could maintain a cause of action if he could have alleged that he had been denied employment as a driver or trainer working for other owners. However if required to consider such question we would hold that it was not such an agency. The purposes and scope of the Act are clearly set forth in Judge Pollack's Opinion

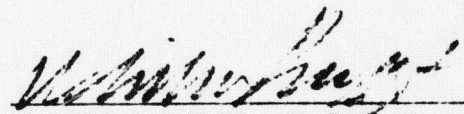
in Porter, supra, and nothing need here be added. Suffice it to say that nothing in the Act or in its history suggests that it was intended to apply to an investigative agency whose activities are confined to providing information to governmental agencies or other persons who are themselves prohibited from using the information without providing due process to any person affected thereby. ^{1/} As will readily appear ^{2/} from a glance at para.11 of the Complaint, the protective requirements of the Act are utterly inappropriate to such an agency. Most of the information required by the Act will be appropriately made available to anyone affected in the due process hearing required before such information can be used. The rest is simply inapplicable to such a proceeding.

The complaint is accordingly dismissed in its entirety.

SO ORDERED.

Dated: New York, New York

January 26, 1976.


WHITMAN KNAPP, U.S.D.J.

FOOTNOTES

1/

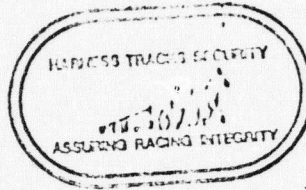
The conditions on the use of information provided by defendant were spelled out in the previous proceeding.

2/

"11. Defendant's investigative consumer report concerning plaintiff was assembled, created and circulated in inter-state commerce -

- a) without disclosure to plaintiff that an investigative consumer report was being made,
- b) without furnishing to plaintiff a copy of said consumer report,
- c) without disclosure to plaintiff of his rights to additional disclosures containing the contents of said report,
- d) without reasonable procedures being maintained to limit the furnishing of the consumer report to proper purposes and persons,
- e) without disclosure to the plaintiff of the sources of the information contained in the consumer report,
- f) without setting forth plaintiff's dispute of the information contained in the report,
- g) without re-investigating within a reasonable period of time the accuracy of the information disputed by plaintiff,
- h) without deleting information found to be inaccurate,
- i) without deleting information which could no longer be verified.
- j) without notification of deletions of inaccurate information to persons who had within two years received defendant's report.
- k) without notification as to non-verifiable information to persons who had within two years received defendant's consumer report.
- l) without disclosing to plaintiff his rights to request the hereinabove described deletions and notifications, and
- m) in total disregard of the provisions of the Fair Credit Reporting Act, 15 U.S.C.A. 1681-1681t, and plaintiff's rights thereunder."

DEFENDANT'S REPORT ON PLAINTIFF DATED FEBRUARY 6, 1973 (ANNEXED
AS EXHIBIT C TO F.V. MINA AFFIDAVIT)



Subject: JOSEPH THOMAS SCHETTINO,
AKA "DOCTOR JOE", JOE BROCK
DOB: 7/1/35
SSN: 140-28-1185

Date February 6, 1973
File No. *9-30
Report by William T. Duke/mjh

Synopsis:

A confidential source, a licensed owner in New Jersey, advised in early October, 1968 that there was an individual who was treating horses at Freehold Raceway and he was not a licensed veterinarian. The source stated he did not know the person's name but knew him only as "DOCTOR JOE". He said DOCTOR JOE had a groom's pass to get in and out of the stable area. According to the source's information, DOCTOR JOE treated a horse for three or four days and then gave him an unknown substance on the day of the race. This source said he heard the treatment cost \$100 and the injection was being given in the jugular vein. The injection was designed to improve a horse's performance without showing up in laboratory tests.

The same source advised that DOCTOR JOE had been at both Monticello and Vernon Downs.

A second confidential source, who is knowledgeable about activities at the track, advised that DOCTOR JOE was JOSEPH SCHETTINO and was on the badge list of trainer DOM ZOFREA. He added that SCHETTINO is supposed to be connected with the waterfront as a longshoreman. He had heard the allegation reported by the confidential source above but had also heard that during a two or three week period in the middle or end of October, 1968, all the alleged activity on the part of DOCTOR JOE had ceased.

The 2nd confidential source in March 1969 advised he had developed information about the alleged medications being used by SCHETTINO. In brief, the medication involved the use of Recosenin, Codesine Gel and vitamins given in conjunction with an intravenous glucose solution.

This report is submitted for the
personal and confidential use of:

SCHETTINO, interviewed at his home in Union City, N.J. on 3/24/70 advised that he had been involved in no wrongdoings of any kind on any race track. He said that he was employed as a hatch boss on the waterfront and denied that he had ever been known as DOCTOR JOE by anyone. He said that he is called JOE BROCK on the docks.

SCHETTINO said he was aware that he had been under observation at Freehold in 1968; however, he was never stopped. He had also heard the authorities had a search warrant to examine his car and maintained he had no knowledge of any drugs being used at the track and denied he had ever used any.

A description of the subject, as contained in New York State Harness Racing Commission file, on 2/11/71 is as follows:

Name	JOSEPH T. SCHETTINO
DOB	7/1/35 at Hoboken, N.J.
Race	White
Sex	Male
Height	5' 10"
Weight	195
Hair	Brown
Eyes	Brown
SSN	140-28-1185
Address	1813 Palisades Avenue, Union City, N.J.
Employment	From 1955 - 1959 - JOHN W. McGRATH, Pier C, Hoboken, N.J. as stevedore- foreman.
Marital Status	Married - Wife OLIVIA ANN KELLENBERGER (nee) SCHETTINO

On 11/3/70 it was determined that a number of horses in the 6th race at Roosevelt Raceway had been tampered with. Veterinarians' opinions were that the horses had been tranquilized, probably with a drug named Reserpine. Investigation developed two additional races which occurred on 9/5/70 and 9/22/70 at Yonkers Raceway in which the horses appeared to have been tranquilized with the same drug. The race on 9/22/70 was cancelled and the race on 11/3/70 was allowed to run as a non-betting event with a six-horse field. Investigation developed the names of ANGELO CARUSO and FRANK COSTANZO as suspects and CARUSO and COSTANZO were subsequently barred from numerous tracks. It is believed that, should the telephone company records be subpoenaed for telephone listed to ANGELO CARUSO, there would probably be numerous calls listed which were made to the home telephone number of SCHETTINO and billed to the home telephone of ANGELO CARUSO.

In November, 1970 a confidential source, a trainer/driver, advised that there was a man from the Fort Lee, N.J. area who was reported to be a supplier of drugs and frequented the lower grandstand at Roosevelt Raceway. He did not know the name of the man but subsequently identified the person in a photograph of JOE SCHETTINO as the man to whom he had referred.

NY 8-53 advised on 12/22/70 that he is acquainted with JOE SCHETTINO from Jersey. NY 8-53 said he does not know where SCHETTINO lives but his connections are in the North New Jersey area, west of Fort Lee, possibly in the Nutley-Bloomfield area. He said JOE SCHETTINO is known as "DOCTOR JOE". NY 8-53 said that approximately two years ago while he was at Freehold, N.J. SCHETTINO had approached him, offering to sell him a drug which would step up his horse's performance.

JUAN S. PRICE, 141 N.W. 43rd Street, Ft. Lauderdale, Florida, on 12/21/70 advised he recalled an incident involving himself at Freehold Raceway which also involved DOCTOR JOE. PRICE believed that his horse had been tampered with because it raced differently. It seemed to him that the horse raced well for one-half mile then "ran out of steam". He added the manure was very loose and the horse acted strangely. He was aware of the fact that this had not happened only to his horse, but had happened to several horses. He had heard of DOCTOR JOE at Freehold but did not know his real name. After the investigation into the race involving PRICE's horse, during which he mentioned the name of DOCTOR JOE, he went to Pompano Park, Florida. DOCTOR JOE approached him at Pompano in early January 1969 and asked PRICE what PRICE had said about him. He was aware of the fact that PRICE had made some kind of statement about him. PRICE added that DOCTOR JOE did not stay around very long, had no horses at the track, and was probably on vacation.

On 1/12/71, JOE SCHETTINO was interviewed at his home in Union City, N.J. Asked about ANGELO CARUSO he said that he knew him from the time CARUSO's horse "MATT RODNEY" was sent to Freehold to trainer TOM LUCHENTO. He estimated the date to be sometime in August, 1970. He said he had seen CARUSO twice at Freehold and approximately three times at New York tracks and had talked to him on the telephone only once. He said he was aware that in the fall of 1970, ANGELO CARUSO owed trainer TOM LUCHENTO a large training bill and, at LUCHENTO's request, he called CARUSO's home twice to ask him to pay. Both times CARUSO was out but CARUSO finally called back and said he would take care of the bill. SCHETTINO had no knowledge of whether the bill was paid or not. He said he did not consider CARUSO a friend.

On 1/19/71 TOM LUCHENTO, trainer-driver, advised he had not asked JOE SCHETTINO to call ANGELO CARUSO regarding CARUSO's bill and did

not know where SCHETTINO had gotten CARUSO's phone number. He also advised that he did not know how SCHETTINO had originally met CARUSO and added when he told SCHETTINO he was going to train the horse, "MATT RODNEY", SCHETTINO said he knew the horse which had been at Yonkers in MATTY ABBATIELLO's barn and he knew the owner, "a guy named CARUSO". Asked about CARUSO's bill, he said CARUSO had paid \$500 on his training bill just before Christmas, in cash. Initially, LUCHENTO said that a friend of his had picked up the money and brought it to him, but he did not wish to mention the friend's name, since he had picked up the money only as a favor. He subsequently admitted that JOE SCHETTINO had brought him the money, but he did not know where SCHETTINO and CARUSO had met to pass the money.

On 2/26/71 ANGELO CARUSO was interviewed under oath at the New York State Harness Racing Commission in the presence of his attorney and during the course of the interview made the statement that sometime in December, 1970 he had driven to Union City, N.J. and gave \$500 to JOE SCHETTINO, at SCHETTINO's home on Palisades Avenue, money which was to be given to TOM LUCHENTO to apply against the bill he owed for his horse, "MATT RODNEY". At the same time, CARUSO stated, still under oath, that he had known JOE SCHETTINO for a couple of years and had originally met him at the track.

A confidential source knowledgeable about the sport of harness racing advised in April 1971 that he has known trainer-driver FRANK PRESTO since he first entered the sport. In 1965 PRESTO had a horse named "KEY WITNESS" with DOM ZOFREA, a trainer-driver. The horse was insured for \$25,000, which in the opinion of the source, was vastly overrated, and subsequently went lame. The horse was stabled in a barn either behind PRESTO's house or behind his real-estate office. A fire began in the stall next to "KEY WITNESS" and the horse was asphyxiated. The \$25,000 insurance claim was paid.

A confidential source in law enforcement advised that PRESTO was convicted on two counts of an indictment charging him with making false statements on FHA mortgage loan application. He was sentenced to two years imprisonment—suspended; probation for five years.

As a result of the conviction, PRESTO's NYSHRC license was subsequently suspended and he was denied a license in 1969.

Another confidential source, a licensed trainer-driver, advised in April 1971 that FRANK PRESTO is friendly with JOE SCHETTINO. The two had been together at Green Mountain Park, Vermont, on March 25, 1971 when the horse "PACIFIC G" won the 8th race in spectacular time compared to the times of other horses on the program. This source commented that whatever DOCTOR JOE gave the horse, it had really helped

The source also said that the owner of the horse, FRED SNOW, Saddle River, N.J., is acquainted with JOE SCHETTINO.

FRANK PRESTO was interviewed on 4/6/71 and admitted traveling to Green Mountain with SCHETTINO and others. He believes that SCHETTINO bet the horse "PACIFIC G" and also "DAG'S LADY" both of them trained by PRESTO. He added that on April 4, 1971 both horses raced again and lost at least two or three seconds compared to the times on their previous trip. He drove one of the horses himself and felt that the horse had "flattened out" in the stretch and had nothing at all left. He believes both horses should have won the races on 4/4/71 and that they had not been trained since the previous race. He also said he had learned that SCHETTINO was at the track on the 4th, but did not see him even though he looked for him.

On 4/29/71 NY 8-53 advised that FRANK PRESTO had been racing at Green Mountain and in his estimation PRESTO is no good for the sport. PRESTO is related to the SNOWS from Saddle River, N.J. and they are "gamblers". JOE SCHETTINO, according to NY 8-53, is friendly with the group and the fact that he would travel to Green Mountain on the night the two SNOW horses won is no surprise to him.

Another confidential source who is a licensed driver-trainer, advised on 5/14/71 that he recognized the person in the photograph of JOE SCHETTINO; however, he said that he knew him as JOE BROCK, since that was the name the man used. He said SCHETTINO had approached him several times in the stands at Freehold and he eventually purchased some supplies from SCHETTINO; B-12, liver and iron and camphor and oil. SCHETTINO always filled the orders within a couple of days of the time the source placed the order.

GERALD BALDACHINO, owner-trainer-driver, advised on 5/14/71 he is acquainted with JOE SCHETTINO and saw SCHETTINO at Green Mountain Park on a few occasions in 1971. One occasion was when "PACIFIC G" and "DAG'S LADY" both won in very fast times. He knows that SCHETTINO has sold veterinary products although BALDACHINO has never purchased any from him. He learned that SCHETTINO used to get his supplies from a veterinary supply house in Union City, N.J. but has heard there was a falling out and SCHETTINO is now getting his supplies from Canada.

On 5/20/71, Anthony Perone, Chief Investigator, NYSHRC, advised that SCHETTINO was being placed on the New York "B" list, based on his association with ANGELO CARUSO and possible involvement in the tranquilization of horses at Roosevelt Raceway 11/3/70.

On 4/5/71 DAN RICCO, owner-trainer-driver, advised that he had seen JOE SCHETTINO spend time in the barn of ROBERT FESH during the previous two years at Monticello. RICCO had heard that SCHETTINO was charging from \$100 - \$150 to treat a horse to improve his performance.

A confidential source advised during 1970 that he had learned from an individual whom he considered to be knowledgeable that one "JOHNNY BOY" was friendly with JOSEPH SCHETTINO aka DOCTOR JOE. This confidential source believed this individual was from Belleville, N.J. and had received 30 days in jail on a gambling charge. "JOHNNY BOY's mother was alleged to have had ownership in thoroughbreds in 1966 or 1967. It was also rumored that this individual used to own thoroughbreds himself, however, he was quoted as saying he didn't need to own any since he had control of enough.

According to this confidential source the information he received from his own contact indicated "JOHNNY BOY" got "the stuff" and gave it to DOCTOR JOE and instructed him how to use it.

In April 1971, the above confidential source indicated he believed the name of "JOHNNY BOY" was JOHN EGIDIO from Belleville, N.J. In May, it was determined EGIDIO, DOB:1/9/28, had been arrested for gambling on 11/18/52 and sentenced to 30 days in the County workhouse.

On 7/23/71, a confidential informant advised that about four years ago there was a group of individuals from the Bloomfield, N.J. area who were involved in corrupt racing. One of the individuals was named OTTO TORRISI(ph) and TORRISI was an owner of harness horses, as well as being involved in thoroughbred racing.

The informant also advised that this group of individuals, during this same period, was involved in obtaining drugs and medications for horses and selling them to horsemen. The informant believes that this group was the source of the material which JOE SCHETTINO was attempting to sell horsemen so that they could improve their horses' performance.

On August 16, 1971, GERALD BALDACHINO stated he first met JOE SCHETTINO around 1964 or 1965 at HOLIDAY FARM, which was owned by JOE MINETTO. The barn has since been destroyed by fire about two years ago. At that time he (BALDACHINO) was getting some supplies from CORNELL DRUGS in Union City and JOE SCHETTINO would often deliver these supplies to the farm. The owner of CORNELL DRUGS was

and is JOE KLAUSNER. After a period of time there was a falling out between KLAUSNER and SCHETTINO because SCHETTINO was going around to horsemen trying to sell them directly. SCHETTINO told BALDACHINO he went to Canada for a short time to work with vets in that country and was talking about Canadian products. To BALDACHINO's mind this seemed to be SCHETTINO's first exposure to horses, namely, his coming on to HOLIDAY FARM. BALDACHINO had no knowledge that SCHETTINO ever owned a horse.

He further maintained he had never let SCHETTINO touch one of his horses nor did he ever purchase anything from him. The reason for this was because he (BALDACHINO) felt his knowledge of horses was far superior than SCHETTINO's.

On August 17, 1971, BALDACHINO stated that he feels that he has no direct knowledge that SCHETTINO has ever treated horses because he personally has never seen him physically give a horse anything. He did admit that SCHETTINO would tell him that he did hit horses for various drivers and made requests to be allowed to treat his, BALDACHINO's horses. He again stated that he never allowed him to treat any of his own horses. He maintained that despite the allegations and stories around the track concerning SCHETTINO's activities and despite the fact that SCHETTINO was selling supplies to the various trainer/drivers and despite the fact that SCHETTINO actually offered to treat his horses, BALDACHINO still maintained that he had no direct knowledge of wrongdoing on the part of SCHETTINO. While SCHETTINO mentioned several drivers to him as having used his service, the only name that came to mind at the moment was MARSH, a trainer from Delaware. He also believed that perhaps TOM LUCHENTO may have used SCHETTINO but again denied any direct knowledge of that being a fact.

In July 1972 an owner/trainer while being interviewed in connection with another matter at Monticello Raceway, advised that he recognized a photograph of JOE SCHETTINO as a person he knew only as JOEY. He said that he had met JOEY years ago when GERRY BALDACHINO was training his horses at MINETTO'S FARM in Northvale, N.J. He said he had been friendly with BALDACHINO at the time and BALDACHINO introduced him to SCHETTINO. The source said he had subsequently disassociated himself with BALDACHINO and as a result has seen SCHETTINO only once or twice in the ensuing years at the track.

GERALD J. BALDACHINO and one of his owners, ANGELO GREGOS, was the subject of an HTS and New Jersey State Police combined investigation in 1971. As the result of interviews, with the State Police, (which were tape recorded) BALDACHINO was given a polygraph test which indicated considerable deception on BALDACHINO's part as

regarded his denials of involvement in corrupt racing practices. GREGOS subsequently offered a \$1000 bribe to State Police Detectives to suppress the results of the polygraph exams and both BALDACHINO and GREGOS were indicated on various charges. At the trial, the tapes made by the State Police were played for the jury and were reported in the Press. BALDACHINO indicated that he had been approached "once a week" to fix races but denied that he had done so. He also admitted that he had not reported suggestions made to him that he fix the race and claimed that he did not know that he was supposed to report them. In explaining his failure to report approaches, BALDACHINO said "you don't understand me. Your a a guy comes up to you like, talking JOEY SCHEFFINO. I would say, once a week in my racing career guys come and tell me they can hit your horse or improve your horse."

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JOSEPH T. SCHETTINO,

Plaintiff,

-against-

COMPLAINT

HARNESS TRACKS SECURITY, INC.,

Defendant.

Plaintiff, complaining of the defendant, herein sets forth and alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. This action is brought under and pursuant to the Fair Credit Reporting Act, 15 U.S.C.A. 1681-1681t.
2. At all times hereinafter mentioned, plaintiff was and still is a resident of the State of New Jersey and a consumer as defined in the provisions of the Fair Credit Reporting Act.
3. At all times hereinafter mentioned, defendant was and still is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and a consumer reporting agency as defined in the provisions of the Fair Credit Reporting Act.
4. That there is a diversity of citizenship between the plaintiff and the defendant and the matter in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00.
5. At all times hereinafter mentioned, defendant held itself out to be engaged in the business of private investigation and in the business of furnishing or supplying, for consideration, information as to the personal character of persons or groups of persons connected with or affecting, directly or indirectly, horse racing in the United States or as to the character or kind of business or occupation of any such person or persons.
6. At all times hereinafter mentioned, plaintiff was and still is a law abiding citizen who, in addition to working as a longshoreman, has, since 1968, from time to time, been employed in and engaged in the business of owning and racing standard bred horses.
7. In accordance with its purported purposes, the defendant, from time to time, assembles and furnishes Summary

Reports to third parties containing consumer credit information and other information on consumers connected with the harness racing industry. 17a

8. Defendant circulates its Summary Reports among harness racing tracks and racing commissions throughout the United States and Canada by means and facilities of inter-state commerce.

9. On or about February 6, 1973, defendant assembled, created and circulated in inter-state commerce an investigative consumer report concerning and dealing with plaintiff's character, general reputation, personal characteristics and mode of living; a copy of said Summary Report is attached hereto as Exhibit A and made a part hereof.

10. Defendant's investigative consumer report concerning plaintiff contains false and malicious information and was meant and intended to convey that plaintiff was engaged in corrupt and criminal practices relating to harness racing and to hold plaintiff in contempt and disrepute in the eyes of harness racing tracks, employers, commissions and the general public.

11. Defendant's investigative consumer report concerning plaintiff was assembled, created and circulated in inter-state commerce -

- a) without disclosure to plaintiff that an investigative consumer report was being made,
- b) without furnishing to plaintiff a copy of said consumer report,
- c) without disclosure to plaintiff of his rights to additional disclosures containing the contents of said report,
- d) without reasonable procedures being maintained to limit the furnishing of the consumer report to proper purposes, and persons,
- e) without disclosure to the plaintiff of the sources of the information contained in the consumer report,
- f) without setting forth plaintiff's dispute of the information contained in the report,
- g) without re-investigating within a reasonable period of time the accuracy of the information disputed by plaintiff,
- h) without deleting information found to be inaccurate,
- i) without deleting information which could

no longer be verified.

j) without notification of deletions of inaccurate information to persons who had within two years received defendant's report.

k) without notification as to non-verifiable information to persons who had within two years received defendant's consumer report.

l) without disclosing to plaintiff his rights to request the hereinabove described deletions and notifications, and

m) in total disregard of the provisions of the Fair Credit Reporting Act, 15 U.S.C.A. 1681-1681t, and plaintiff's rights thereunder.

AS AND FOR A SECOND CAUSE OF ACTION

12. Plaintiff repeats and reiterates each and every allegation hereinbefore set forth in paragraphs 1 through 12.

13. Defendant's report concerning plaintiff herein set forth as Exhibit A was compiled in a negligent and reckless manner without regard as to whether the statements and accusations therein contained were accurate or provable.

14. By reason of the aforesaid, plaintiff's reputation and good name have been severely damaged, plaintiff has been denied membership in The United States Trotting Association, plaintiff has been denied employment, and has been informed that he will be denied licenses by the racing commissions of the various states in which he wishes to be employed in the harness racing industry.

15. By reason of the aforesaid, defendant is liable to the plaintiff for damages, punitive and otherwise, in the sum of \$750,000.00.

16. By reason of the aforesaid, defendant is also liable to the plaintiff for reasonable attorney's fees as determined by the Court.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of \$750,000.00, together with interest, attorney's fees and the costs and disbursements of this action.

SOHN & GROSS
Attorneys for Plaintiff
Office & P. O. Address
P. O. Box 85
76 North Main Street
Spring Valley, New York 10977
914 352-5300

Take notice that plaintiff herein demands trial by

jury.

SOHN & GROSS
Attorneys for Plaintiff
Office & P. O. Address
P.O.B. 85
76 North Main Street
Spring Valley, New York 10977
914 352-5300

19a-1

EXHIBIT A - DEFENDANT'S REPORT ON PLAINTIFF DATED FEBRUARY 6, 1973
ANNEXED TO FOREGOING COMPLAINT

(Omitted here but printed at page 8a)

-----X
JOSEPH T. SCHETTINO,

Plaintiff,

ANSWER

75 Civ. 313 (WK)

-against-

HARNESS TRACKS SECURITY, INC.,

Defendant.
-----X

Defendant, by its attorney, F. V. MINA, Esq.,
answering the complaint of the plaintiff herein upon information
and belief alleges:

ANSWERING THE FIRST
CAUSE OF ACTION:

1. Denies each and every allegation contained in paragraphs designated 4, 7, 8, 9, 10 and 11.
2. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated 2 and 6.
3. Admits each and every allegation contained in paragraphs designated 1 and 3.
4. Denies each and every allegation contained in paragraph designated 5 except admits that defendant was in the business of furnishing or supplying information as to the background of persons or groups of persons connected with harness

horse racing.

**ANSWERING THE SECOND
CAUSE OF ACTION:**

5. Repeats and reiterates each and every answer to the allegations set forth in paragraph designated 12.

6. Denies each and every allegation contained in paragraphs designated 13, 14, 15 and 16.

**AS AND FOR A FIRST COMPLETE
AFFIRMATIVE DEFENSE TO THE
PLAINTIFF'S CAUSE OF ACTION:**

The defendant contends that the plaintiff fails to state a cause of action against the defendant, Harness Tracks Security, Inc., under the Fair Credit Reporting Act, 15 U.S.C.A. 1681-1681t.

**AS AND FOR A SECOND COMPLETE
AFFIRMATIVE DEFENSE TO THE
PLAINTIFF'S CAUSE OF ACTION:**

That this action is barred due to the fact that the defendant has already had a judgment in its favor in an action based on the same set of facts and the same report alleged in this complaint in the Federal Court, Southern District, in the case of Schettino v. Harness Tracks Security, Inc., 73 Civ. 1913 (WK), filed on December 3, 1974.

**AS AND FOR A THIRD COMPLETE
AFFIRMATIVE DEFENSE TO THE
PLAINTIFF'S CAUSE OF ACTION:**

The plaintiff is barred by the Statute of

AS AND FOR A FOURTH COMPLETE
AFFIRMATIVE DEFENSE TO THE
PLAINTIFF'S CAUSE OF ACTION:

That the defendant, Harness Tracks Security, Inc.,
has a qualified privilege as regards the report alleged in the
plaintiff's complaint.

AS AND FOR A FIFTH COMPLETE
AFFIRMATIVE DEFENSE TO THE
PLAINTIFF'S CAUSE OF ACTION:

That there was no publication of the report on
the plaintiff herein.

AS AND FOR A SIXTH COMPLETE
AFFIRMATIVE DEFENSE TO THE
PLAINTIFF'S CAUSE OF ACTION:

That the report made by the defendant herein in
no way falls under the category of a "consumer report" as defined
in the Fair Credit Reporting Act.

AS AND FOR A SEVENTH COMPLETE
AFFIRMATIVE DEFENSE TO THE
ALLEGED CAUSE OF ACTION:

That the contents of the publication complained
of were true and were disseminated without malice.

WHEREFORE, defendant, demands judgment dismissing
the plaintiff's complaint together with the costs and

disbursements of this action.

Dated: New York, New York
February 25, 1975

181
F. V. MINA
Attorney for Defendant
217 Broadway
New York, New York 10007
(212) 233-4397

To: SOHN & GROSS
Attorneys for Plaintiff
76 North Main Street
Spring Valley, New York 10977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JOSEPH T. SCHETTINO,

Plaintiff,

-against-

HARNESS TRACKS SECURITY, INC.,

Defendant.

NOTICE OF MOTION FOR
DISMISSAL OF ACTION
BY SUMMARY JUDGMENT

73 Civ. 1913 (WK)

-----X

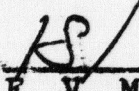
S I R S:

PLEASE TAKE NOTICE, that in this action, upon the complaint in 75 Civ. 313, the answer of Harness Track Security, Inc. together with the annexed statement pursuant to Rule 9(g) of this Court, the annexed affidavit of Frank V. Mina sworn to on the 21st day of July, 1975, the annexed affidavit of John Brennan sworn to on the 22nd day of July , 1975, and all prior proceedings heretofore had herein, defendant, Harness Track Security, Inc. will move this Court on the 19th day of September , 1975 at 2:00 o'clock in the afternoon or as soon thereafter as counsel can be heard, in Courtroom , before the Honorable Whitman Knapp, in the United States Courthouse for the Southern District of New York, Foley Square, New York, for an order pursuant to Rule 56(g) of the Federal Rules of Civil Procedure dismissing the complaint as to the defendant, Harness Track Security, Inc., on the grounds that the plaintiff fails to state

a claim upon which relief may be granted and on the ground that there is no genuine issue as to any material fact and that said defendant is entitled to judgment as a matter of law with costs and disbursements.

PLEASE TAKE FURTHER NOTICE, that pursuant to the rules of this Court, answering papers, if any are required to be served on the undersigned at least three (3) days before the return date of this motion.

Dated: New York, New York
July 21, 1975


F. V. MINA
Attorney for Defendant
217 Broadway
New York, New York 10007
(212) 233-4397

To: SOHN & GROSS, Esqs.
Attorneys for Plaintiff
14 Church Street
Spring Valley, New York 10977

STATEMENT PURSUANT TO RULE 9 (g)

26a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JOSEPH T. SCHETTINO,

Plaintiff,

-against-

HARNESS TRACKS SECURITY, INC.,

Defendant.

STATEMENT PURSUANT
TO RULE 9(g)

73 Civ. 1913 (WK)

-----X

Defendant, Harness Tracks Security, Inc., for its Statement Pursuant to Rule 9(g) of the General Rules of this Court, contends that with respect to each of the following material facts there is no genuine issue to be tried:

1. Defendant, Harness Tracks Security, Inc., is a New York Corporation which was and still is doing business in the State of New Jersey.

2. Defendant is engaged in the business of investigating and supervising horse racing integrity and security and provides such information to a select group of individuals and organizations that contract for such services and who has the duty and obligation to maintain said integrity and security.

3. Defendant did compile a report, dated February 6, 1973, on the plaintiff, Joseph Thomas Schettino and did forward this report to certain individuals and corporations

as described in paragraph 2 of this statement.

4. The report deals with certain statements made by confidential sources as to activities of the plaintiff.

Dated: New York, New York
July 21, 1975

Yours, etc.,

F. V. MINA
Attorney for Defendant
217 Broadway
New York, New York 10007
(212) 233-4397

By: IS/ F. V. MINA
a member of the firm

AFFIDAVIT OF F.V. MINA IN SUPPORT OF MOTION

28a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JOSEPH T. SCHETTINO,

Plaintiff,

-against-

HARNESS TRACKS SECURITY, INC.,

Defendant.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

F. V. MINA, Esq., being duly sworn, deposes
and says:

1. That I am an attorney, admitted to practice in this Court, and am the attorney for the defendant, Harness Tracks Security, Inc. I am familiar with the proceedings herein.
2. That this affidavit is made in support of a motion by the defendant herein for summary judgment dismissing the complaint on the grounds that there are no genuine issues of material fact and that the plaintiff has failed to state a cause of action upon which relief may be granted; therefore, the defendant herein is entitled to judgment as a matter of law.
3. That plaintiff commenced this action on January 21, 1975 for an alleged violation of the Fair Credit Reporting Act, 15 U.S.C.A. 1681-1681 t, and for libel of the

plaintiff's good name and reputation.

PLEADINGS

4. In this action, the plaintiff alleges: (See Exhibit A)

(a) A claim that the defendant herein did violate and disregard the provisions of the Fair Credit Reporting Act, 15 U.S.C.A. 1681-1681 t, and plaintiff's rights thereunder.

(b) In the second cause of action, the plaintiff claims that the defendant did recklessly and negligently compile a report of the plaintiff and did thereby damage the good name and reputation of the plaintiff.

5. The defendant herein in its answer (see Exhibit B) generally denied the material allegations of the complaint and pleaded affirmative defenses of failure to state a cause of action under the Fair Credit Reporting Act, 15 U.S.C.A. 1681-1681 t, Res Judicata and Collateral Estoppel, Statute of Limitations, qualified privilege, lack of publication, truth and lack of malice.

BACKGROUND

6. Defendant, Harness Tracks Security, Inc., is a New York Corporation which is engaged by certain individuals and corporations to investigate and supervise security and to maintain the integrity of the Harness Racing Industry. The

defendant herein is obligated to make reports and to issue statements to those groups. In furtherance of the above discussed functions, the defendant did make and forward a report which it had compiled, based on confidential informants, as to certain possibly unethical practices of the plaintiff. (See Exhibit C.)

7. This report contains information by two informants as to the activities of the plaintiff, a short statement relating to an interview of the plaintiff, a description of the plaintiff, and a report of race tampering with an investigative opinion.

CONTENTIONS OF THE
DEFENDANT HEREIN

8. The defendant herein contends:

(a) That with respect to the claim that the defendant violated the Fair Credit Reporting Act, this claim should be dismissed for any of the following reasons:

- (1) The plaintiff has failed to state a cause of action upon which relief may be granted; and
- (2) This action is barred by the Doctrine of Res Judicata and Collateral Estoppel.

(b) That with respect to the claim that the defendant injured the good name and reputation of the plaintiff, this action is barred by the Doctrine of Res Judicata and Collateral Estoppel.

9. To state the plaintiff's first cause of action in the simplest terms, the report prepared by the defendant is not within the meaning of the Fair Credit and Reporting Act. The defendant is not and never was a consumer reporting agency nor is the report involving the plaintiff in a consumer report within the meaning of the act.

10. Section 1681 of the Fair Credit Reporting Act, Sub. Section (a) refers to Congress making the following finding:

"The banking system is dependent upon fair and accurate credit reporting; inaccurate credit reports directly impair the efficiency of the banking system and unfair credit reporting undermines the public confidence which is essential to the continued functioning of the banking system."

From the intent of the Section itself, it is obvious that this report, which is limited to alleged racing violations, has nothing whatsoever to do with the banking industry or fair credit reporting.

11. As to the plaintiff's first and second causes of action, the same facts concerning the same parties, the plaintiff, Joseph Schettino, and defendant, Harness Tracks Security, Inc., have been previously litigated before the Honorable Justice Whitman Knapp, in the United States Courthouse for the Southern District of New York (Joseph T. Schettino v.

Harness Tracks Security, Inc., 73 Civ. 1913) and a decision was rendered in favor of the defendant. Therefore, the plaintiff's complaint is barred by the Doctrine of Res Judicata and Collateral Estoppel.

12. The plaintiff's second cause of action is barred by the Statute of Limitations and by the Doctrine of Collateral Estoppel.

13. The plaintiff's prayer for relief, in addition to an award for compensatory damages, also asks for an award for punitive damages. Under Section 1681 of Title 15 U.S.C.A., the plaintiff is specifically limited to actual damages sustained and possibly attorneys' fees.

14. There being no genuine issue of material fact for trial, with respect to any of the claims asserted against the defendant, and the fact that the plaintiff's first cause of action is inapplicable to the facts herein involved, due to the fact that Title 15 U.S.C.A. 1681-1681 t does not apply to these facts, and further that the current action is barred by the Doctrine of Res Judicata and Collateral Estoppel, said defendant is entitled to summary judgment dismissing the complaint as a matter of law, with costs and disbursements.

WHEREFORE, the defendant respectfully requests that plaintiff's complaint be dismissed and summary judgment be granted to the defendant together with costs and disbursements

of this action.

F. V. Mina
F. V. MINA

Sworn to before me, this
21st day of July , 1975.

LENORE LITTLE (Mitchell)
Notary Public, State of New York
No. 24-9320604
Qualified in Kings County
Commission Expires March 30, 1976

EXHIBIT C - DEFENDANT'S REPORT ON PLAINTIFF DATED FEBRUARY 6, 1973

(Printed Infra at page 8a)

AFFIDAVIT OF JOHN L. BRENNAN IN SUPPORT OF MOTION

35a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JOSEPH T. SCHETTINO,

Plaintiff,

-against-

HARNESS TRACKS SECURITY, INC.,

Defendant.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

AFFIDAVIT OF
JOHN L. BRENNAN

73 Civ. 1913 (WK)

JOHN L. BRENNAN, being duly sworn, deposes
and says:

1. That I am the President of Harness Tracks Security, Inc., the defendant herein, and I make this affidavit in support of the motion herein for summary judgment dismissing the complaint.

2. That defendant, Harness Tracks Security, Inc., is a New York Corporation which engages in the investigation and maintenance of the integrity of the Harness Racing sport.

3. That at no time was the report concerning the plaintiff, Joseph T. Schettino, designated to any individual or organization that did not have the duty of maintaining the security and honesty of the Harness Racing sport.

4. That defendant, Harness Tracks Security, Inc., has not rendered this report to any bank or any similar type of credit agency and has strictly limited this report to organizations involved in Harness Racing.

5. That at no time has the defendant been engaged in business as a credit reporting agency.

WHEREFORE, the defendant, Harness Tracks Security, Inc., demands summary judgment dismissing the complaint herein together with costs and disbursements of this action.

LS/
JOHN L. BRENNAN

Sworn to before me, this
22nd day of July , 1975.

LENORE LITTLE (Mitchell)
Notary Public, State of New York
No. 24-9820604
Qualified in Kings County
Commission Expires March 30, 1976

AFFIRMATION OF JOSHUA GROSS IN OPPOSITION TO MOTION

37a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JOSEPH T. SCHETTINO,

75 Civ. 313 (WK)

Plaintiff,

-against-

AFFIRMATION IN
OPPOSITION

HARNESS TRACKS SECURITY, INC.,

Defendant.

-----X

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss:

JOSHUA GROSS, an attorney admitted to practice before the Courts of this State, affirms as follows:

1. I am the attorney for the plaintiff in the above entitled action, and I make this affirmation in opposition to defendant's motion to dismiss the complaint.

2. The gist of defendant's motion would seem to be based on the contention that defendant is not a consumer reporting agency and that, thus, its report concerning plaintiff is not an investigative consumer report within the meaning of the Fair Credit Reporting Act, 15 U.S.C.A. 1681-1681 t.

3. Unfortunately for defendant's position, what defendant is and does comes well within the meaning of the act.

4. Defendant is a New York corporation incorporated in 1968. Attached herewith as Exhibit A is a copy of its Certificate of Incorporation.

5. Paragraph SECOND 1. (a) of the Certificate of Incorporation sets forth as one of the purposes for defendant's formation, the following:

"To engage in business of a private investigator and in the business of furnishing or supplying for consideration, information as to the personal character and activities of any person, firm, company, or corporation, society or association, or of any person or groups of persons connected with or affecting directly or indirectly horse racing in the United States, or as to the character or kind of business and occupation of any such person, firm, company or corporation, and to conduct and

maintain a bureau or agency for the above-mentioned purposes."

6. The Fair Credit Reporting Act, Section 1681a. (e) defines the term "investigative consumer report" as follows:

"The term 'investigative consumer report' means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer."

7. The Fair Credit Reporting Act, Section 1681a (f) defines the term "consumer reporting agency" as follows:

"The term 'consumer reporting agency' means any person which, for monetary fees, dues or on a cooperative non-profit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for purposes of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

8. The Fair Credit Reporting Act, Section 1681 b (3) (D) provides that a consumer reporting agency may furnish a consumer report to a person which it has reason to believe

"intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status."

9. Defendant has admittedly conducted an investigation of plaintiff and has furnished its report to racing commissions and racetracks which have used it in evaluating plaintiff's qualifications for licensing and employment. It is plaintiff's contention that, in its activities, defendant has failed to comply with the provisions of the Fair Credit Reporting Act.

10. The Fair Credit Reporting Act has been held "to protect

an individual from inaccurate or arbitrary information about himself in a consumer report that is being used as a factor in determining the individual's eligibility for credit, insurance or employment. 116 Cong. Rec. 36572 (1970). Congress ascertained a 'need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.' 15 U.S.C. 1681 (a) (4)." *Than Porter v. Talbot Perkins Children's Services et al.* 355 Federal Supplement, 174.

11. Further, the scope of some of defendant's activities can best be described by defendant itself. The testimony of defendant's employee, John McGuire, at the former trial, reveals the following:

"Q. Mr. McGuire, what would an in-depth investigation mean?

A. It would mean that you would certainly conduct a very lengthy interview, as far as background, former residences, former employment, references personally, references in regard to the people in racing that he could give or anyone could give. It would also mean a neighborhood investigation, checking on the character reputation.

It would also mean requesting financial data either in the form of bank statements or income tax statements to ascertain whether the man has the financial ability to own horses. It would also mean checking the various sources in the surrounding states. By that I would mean any state - Delaware, Maryland, Pennsylvania, New York, New Jersey - to determine if there was any derogatory information on the man."

12. "An agency which regularly sells consumer reports which affect commercial eligibility is a consumer reporting agency within Fair Credit Reporting Act." *Than Porter v. Talbot Perkins Children's Services et al.* 355 Federal Supplement, 174.

Thus, the Federal Trade Commission finds that "... detective agencies and others preparing employment reports and collection agencies, all of which perform services which aid and support institutions making economic decisions, such as whether to give employment..."

come within the meaning of the Fair Credit Reporting Act.

13. The issues presented in this law suit were not raised in the prior law suit between the parties, and thus were not

adjudged in the prior law suit.

14. I therefore respectfully pray that defendant's motion be in all respects denied.

Dated: Spring Valley, New York
October 27, 1975

JOSHUA GROSS

CERTIFICATE OF INCORPORATION (ANNEXED TO FOREGOING
AFFIRMATION)
CERTIFICATE OF INCORPORATION

of

HARNESS TRACKS SECURITY, INC.

Pursuant to Section 402 of the Business Corporation Law.

I, the undersigned, for the purpose of forming a corporation pursuant to Section 402 of the Business Corporation Law of the State of New York, do hereby make, subscribe and acknowledge this certificate to certify as follows:

FIRST: The name of the corporation shall be HARNESS TRACKS SECURITY, INC.

SECOND: The purposes for which the corporation is to be formed are as follows:

1. Subject to compliance with the provisions of Article 7 of the General Business Law of the State of New York:

(a) To engage in business of a private investigator and in the business of furnishing or supplying for consideration, information as to the personal character and activities of any person, firm, company, or corporation, society or association, or of any person or groups of persons connected with or affecting directly or indirectly horse racing in the United States, or as to the character or kind of business and occupation of any such person, firm, company or corporation, and to conduct and maintain a bureau or agency for the above-mentioned purposes;

(b) To investigate any and all aspects of harness horse racing in the United States;

(c) To seek out and expose crimes, misdemeanors, breaches of rules and regulations connected with or relating to harness horse racing in the United States and any and all

things prejudicial to the interest of the public and to the sport of horse racing; and to report any such crimes, misdemeanors and breaches to any governmental or private authorities having jurisdiction, for such action as they may deem proper, and to secure and turn over evidence for use before any such governmental or private authorities; or for use in the trial of civil or criminal cases;

(d) To enter into agreements with persons, firms, companies, corporations, societies and associations connected with harness horse racing in the United States to furnish and supply for consideration its services under any or all of the powers enumerated in subdivisions (a) to (c), both inclusive, of this Article 1, or under any and all the powers now or hereafter conferred by the laws of the State of New York upon corporations organized pursuant to Article 2 of the ~~Business~~ Corporation Law.

2. To the extent permitted by law, to enter into, make, perform and carry out contracts of every sort and kind for any lawful purpose pertaining to its business with the United States of America or any of its departments or bureaus and with any states, towns, villages, municipalities and other governmental units, whether domestic or foreign, and with any persons, firms, associations and corporations.

3. To purchase, hold, sell, lease, exchange, hire, acquire by gift, devise or otherwise and dispose of lands or any interest therein.

4. To borrow or raise money without limit as to amount and to issue bonds, debentures, or obligations of this corporation from time to time, for any of the objects or

purposes of the corporation, and to secure the same by mortgage, pledge, deed of trust or otherwise.

5. To purchase, hold, sell and transfer the shares of its own capital stock and its own bonds, debentures or other obligations, secured or unsecured.

6. To have one or more offices and to carry on and conduct all or any of its operations and business in any of the States, Districts, Territories or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony or Country.

In general, to do everything necessary, suitable or proper for the accomplishment of any of the foregoing purposes or the exercise of any of the foregoing powers, either alone or in association with other corporations, persons, firms or associations and either on its own account or as the agent of other corporations, persons, firms or associations, and to do any other acts or things incidental, pertaining to, growing out of or connected with any of the foregoing purposes or powers, and to have and exercise all the powers now or hereafter conferred by the laws of the State of New York.

THIRD: The total number of shares which may be issued by the corporation is two hundred (200), all of which are to be without par value.

Such shares without par value may be issued from time to time for such consideration as from time to time may be fixed by the board of directors.

FOURTH: The office of the corporation shall be located in the Borough of Manhattan, City, County and State of New York.

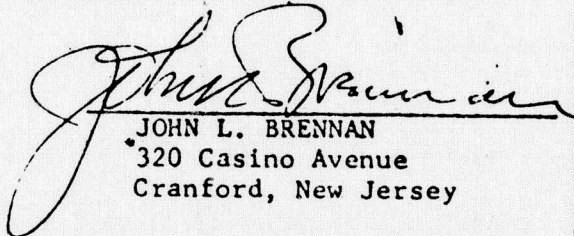
FIFTH: The duration of the corporation shall be perpetual.

SIXTH: The name and post office address of the subscriber to this certificate of incorporation is as follows:

JOHN L. BRENNAN
320 Casino Avenue
Cranford, New Jersey

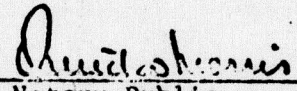
SEVENTH: The Secretary of State of the State of New York is hereby designated as the agent of the corporation upon whom process in any action or proceeding against it may be served, and the address to which the Secretary of State shall mail any such process is care of DAVID W. MORRIS, Attorney, 90 State Street, Albany, New York 12207.

IN WITNESS WHEREOF, I have made, subscribed and acknowledged this certificate this 26th day of April, 1968.


JOHN L. BRENNAN
320 Casino Avenue
Cranford, New Jersey

STATE OF NEW YORK)
) ss:
COUNTY OF SARATOGA)

On this 26th day of April, 1968, before me personally appeared JOHN L. BRENNAN, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same, for the uses and purposes therein expressed.


Notary Public

Comm. Exp. 3-30-69

A 202 Affidavit of Personal Service of Papers
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

JOSEPH T. SCHETTINO,
Plaintiff- Appellant,

- against -

HARNESS TRACKS SECURITY INC.,
Defendant-Appellee,

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Reuben A. Shearer *being duly sworn,*
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
211 West 144th Street, New York, New York 10030


That on the 28th day of May 1976 at 55 Wall Street, New York, New York

deponent served the annexed Appendix ~~Brief~~ upon

Sherman & Sterling

the Attorneys in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 28th
day of May 19 76


Reuben Shearer

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977.